IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1967

No. 247

THE PUYALLUP TRIBE, a Federal Organization,
Petitioner,

v.

DEPARTMENT OF GAME OF THE STATE OF WASHINGTON AND THE DEPARTMENT OF FISHERIES OF THE STATE OF WASHINGTON,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

MEMORANDUM FOR RESPONDENTS

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MEMORANDUM FOR RESPONDENTS

STATEMENT

The Department of Game and the Department of Fisheries of the State of Washington (respondents herein) are duly constituted agencies of state government charged with the duty of conserving, preserving, propogating and maintaining food fish and

game fish for the benefit of the public. (Revised Code of Washington, Title 75 and Title 77). The food fish and game fish resources of the state are of great importance in terms of economic and recreational benefits to the public.

In recent years, various of the thirty-nine tribes and bands of Indians in the State of Washington who are signatories to and beneficiaries of treaties with the United States[1] have asserted privileges and immunities from the application of state fishery conservation laws and regulations. Petitioners herein are one such group of Indians who claim privileges and immunities under the Treaty of Medicine Creek, 10 Stat. 1132. Under such claimed treaty-secured privileges and immunities, petitioners and large numbers of other Indians have begun to engage in large scale net fisheries outside reservation boundaries on rivers and streams throughout the State of Washington for commercial purposes. The effect of such unregulated off-reservation Indian fisheries has been to seriously deplete salmon and steelhead runs in some of our watersheds. If permitted to continue, irreparable damage will be done to the salmon and steelhead resources of the State of Washington.

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[1]Treaty of Medicine Creek, 10 Stat. 1132; Treaty With The Yakima, 12 Stat. 951; Treaty of Point Elliot, 12 Stat. 927; Treaty With The Quinaealt, 12 Stat. 971; Treaty With The Walla Walla, 12 Stat. 945; Treaty With The Makah, 12 Stat. 939; Treaty With The Nez Perce, 12 Stat. 957.

ARGUMENT

Serious confusion has arisen between the state agencies charged with the duty of conserving salmon and steelhead and large numbers of treaty Indians who claim immunity from the application of state fishery conservation laws. Courts of various jurisdictions have construed the treaty language, as it pertains to off-reservation fishing and hunting activities by Indians, in a contradictory manner. The treaty language in question is "* * * the right of taking fish at all usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory * * *" (10 Stat. 1132).

The Supreme Court of Idaho has ruled the State of Idaho has no jurisdiction to enforce its hunting laws and regulations to treaty Indians outside reservation boundaries, *State v. Arthur*, 74 Ida. 251, 261 P.2d 135 (1954).

The Ninth Circuit Court of Appeals has ruled that the State of Oregon may only apply its conservation laws and regulations to Indians outside reservation boundaries where it is "indispensible" to the preservation of the resource itself. *Maison v. Confederated Tribes of the Umatilla Indian Reservation*, 314 F. 2d 169 (9th Cir. 1963).

In the opinion below, the Supreme Court of the State of Washington interpreted the same treaty language in such a manner as to permit the state agencies to enforce state conservation laws and reg-

ulations to treaty Indians outside reservation boundaries whenever it is "reasonable and necessary" to do so. *Department of Game v. The Puyallup Tribe, Inc.*, 70 W.D. 2d 241, 422 P.2d 754 (1967) and *Department of Game v. Nugent Kautz*, 70 W.D.2d 270, 422 P.2d 771 (1967).[1]

In light of the varying interpretations placed upon the language which is found in all Indian treaties executed in the Pacific Northwest, respondents recommend that this Court grant the Petition for a Writ of Certiorari.

Respondents would also point out that the differing interpretations of the treaty language by the lower courts, discussed above, are directly inconsistent with prior decisions of this Court. See: *Ward v. Race Horse*, 163 U.S. 504 (1896); *United States v. Winans*, 198 U.S. 371 (1905); *New York ex rel. Kennedy v. Becker*, 241 U.S. 556 (1916); *Tulee v. Washington*, 315 U.S. 681 (1942) and *Village of Kake v. Egan*, 369 U.S. 60 (1962).

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[1]*Department of Game v. Nugent Kautz, et al., supra*, is presently before this Court on a Petition for a Writ of Certiorari, October Term, 1967, Docket No. 319.

CONCLUSION

For the foregoing reasons, respondents respectfully urge that the petition for a writ of certiorari in this case be granted.

Respectfully submitted,

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